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In re Application of
Leonard Sadjadi
Application No. 09/736,354
Filed: December 14, 2000
Attorney Docket No. LSUI-27,721US

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition filed November 23, 2005, by attorney James Bradley. The petition will be treated as a petition under 37 CFR 1.182 and 37 CFR 3.81.

The petition under 37 CFR 1.182 is **dismissed**.

The petition under 37 CFR 3.81 is **dismissed**.

Facts:

The application and an executed declaration were filed on December 14, 2000. The declaration included a power of attorney giving authority to prosecute the application to James Bradley, Frank Vaden, Charles Gunter, and Andrew Dillon.

Petitioner is Micrin Technologies Corporation ("Micrin"). Petitioner alleges that, as early as the time the application was filed, Micrin owned a 50% interest in the application and L.S. Unico, Inc. ("Unico") owned the remaining 50% interest.

A "Revocation and Appointment of Power of Attorney and Statement Under 37 C.F.R. § 3.73(b)" was filed October 17, 2003. The paper was signed by Leonard Sadjadi as Director for Unico. Leonard Sadjadi is also the applicant and sole inventor.

Parties which can properly sign a revocation and power of attorney are:

- (1) A single assignee of the entire interest in the application;
- (2) All partial assignees, or all partial assignees and inventors who have not assigned their right, title and interest in the application, who together own the entire right, title and interest in the application; and
- (3) All the inventors unless the inventors have been excluded per 37 CFR 3.71.

Since the Revocation was signed by the sole inventor, the Revocation was properly accepted and entered by the Office.

The October 17, 2003 paper gave powers of attorney to Roger Chauza and Mark Handley. The paper changed the address of record to the address associated with customer number 31782.

Chauza and Handley began prosecuting the application.

A Notice of Allowance and a Notice of Allowability were mailed on February 22, 2005.

The issue fee was submitted on May 9, 2005. The issue fee transmittal form, signed by Mark Handley, did not list any assignee.

On July 18, 2005, James Bradley filed a petition to withdraw the application from issuance and to expressly abandon the application in favor of a continuation application. James Bradley acted on behalf of petitioner, and not Unico.

James Bradley did not have authority to sign the paper and the paper should not have been entered.

A petition was filed on August 10, 2005. In response, the Office vacated the petition to withdraw from issue and determined the application was not abandoned. The Office decision was mailed November 18, 2005.

The instant petition is filed by James Bradley on behalf of Micrin. The petition requests the Office reconsider the decision mailed November 18, 2005. The petition also requests the Office take steps to ensure Micrin's name appears on the face of the patent or allow Micrin to obtain relief under 37 CFR 3.81(b).

Reconsideration of the prior decision:

35 U.S.C. 151 states, "Upon payment of [the issue fee,] the patent shall issue." The word "shall" indicates the Office *must* issue a patent upon payment of the issue fee unless a proper petition to withdraw from issuance is filed.

A proper petition to withdraw from issuance has not been filed. The petition was signed by James Bradley who does not have a power of attorney. Allowing the petition to be granted would result in the application becoming abandoned as a result of the express abandonment also filed. Petitioner has failed to prove the Office should allow Micrin to abandon the application over the objections of the attorneys of record and the other assignee.

Since petitioner has not proven the prior decision was incorrect, the instant petition is dismissed.

The assignee names to be listed on the patent.

37 CFR 3.81(b) states:

Any request for issuance of an application in the name of the assignee submitted after the date of payment of the issue fee, and any request for a patent to be corrected to state the name of the assignee, must state that the assignment was submitted for recordation as set forth in § 3.11 before issuance of the patent, and must include a request for a certificate of correction under § 1.323 of this chapter (accompanied by the fee set forth in § 1.20(a)) and the processing fee set forth in § 1.17(i) of this chapter.

The Office no longer corrects assignee information after payment of the issue fee but prior to issuance of the patent. One may only correct assignee information after the issue fee by filing a request for a certificate of correction along with the request under 37 CFR 3.81(b).

The Office will not accept a petition under 37 CFR 3.81(b) and certificate of correction from Micrin at this time.

The Office hesitates to become involved in ownership disputes. In this case, litigation is pending in the state of Texas concerning Micrin's ownership interest in the patent. The Office chooses to allow the Texas court to resolve the ownership issue.

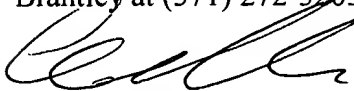
At this time, a certificate of correction will not be granted. If the resolution of the litigation indicates Micrin has an ownership interest, then Micrin is welcome to inform the Office of the resolution and to file a petition under 37 CFR 3.81 along with a request for a certificate of correction.

The Office wishes to ensure the parties understand the implications of the Office's failure to allow the addition of Micrin's name to the patent. Although the recordation of an assignment carries some legal benefits, the appearance of an assignee's name on the front of a patent provides an assignee with no benefits. The appearance of the assignee's name does NOT indicate the Office has determined the assignee has *any* ownership interest in a patent. Instead, the appearance of the name merely indicates the party wished for the name to appear on the fact of the patent and the party has recorded a document with the Office which the party indicated was an assignment. The refusal to accept a certificate of correction as this time should not harm the legal rights of Micrin.

The petition to review the prior decision has been treated as a petition under 37 CFR 1.182 and a petition fee of \$400 will be charged to petitioner's deposit account. Considering all the facts and circumstances, the Office will not charge any additional fees for the petition.

The Office of Patent Publications will be informed of the instant decision so that it may take steps to issue the instant application as a patent.

Telephone inquiries regarding this decision should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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